

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 ----- x

SABINA PARADI, ET AL.,

5

Plaintiff,

6

07 CIV 3640(JCF)

7

-against-

8

MICHAEL R. PHILLIPS,

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Defendant.

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13 DEPOSITION of a Nonparty Witness,
14 MATTHEW CHIN BLANK, taken pursuant to Subpoena,
15 held at the offices of Barrister Reporting
16 Service, Inc., 120 Broadway, New York, New York,
17 on August 27, 2007, at 11:23 a.m., before a Notary
18 Public of the State of New York.

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22 *****

BARRISTER REPORTING SERVICE, INC.

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120 Broadway

New York, N.Y. 10271

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212-732-8066

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2 A P P E A R A N C E S:

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BY: SEAN M. CONNELLY, ESQ.

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S T I P U L A T I O N S

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5 IT IS HEREBY STIPULATED AND AGREED by and
6 between the attorneys for the respective parties
7 herein, that filing, sealing and certification,
8 and the same are, hereby waived.

9

10 IT IS FURTHER STIPULATED AND AGREED that
11 all objections except as to the form of the
12 question, shall be reserved to the time of the
13 trial.

14

15 IT IS FURTHER STIPULATED AND AGREED that
16 the within deposition may be signed and sworn to
17 by an officer authorized to administer an oath,
18 with the same force and effect as if signed and
19 sworn to before the Court.

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1 Blank

2 M A T T H E W C H I N B L A N K ,

3 having been first duly sworn before a Notary

4 Public of the State of New York, was examined and

5 testified as follows:

6 EXAMINATION BY

7 MR. BUTLER:

8 Q What is your name?

9 A Matthew Chin Blank.

10 Q What is your address?

11 A 61 Bayard Street, New York, New York

12 10013.

13 Q Mr. Blank, how did Sabina refer to you

14 as Matt, Matthew?

15 A I'm sorry, how did she refer to me?

16 Q Matt, Matttthew?

17 A Matt.

18 Q How would you refer to her?

19 A Sabina.

20 Q So I will use those names if it is

21 okay with you?

22 A Yes.

23 Q My name is Butler and I represent

24 Michael Phillips in connection with a suit

25 instituted by the family of Sabina in

1 Blank

2 connection with an incident on February 25th
3 of 2007 at West 37th Street and Ninth Avenue.
4 You have some familiarity with that incident,
5 do you not?

6 A Yes, I do.

7 Q Have you ever had your deposition
8 taken before?

9 A I never have.

10 Q Have you ever testified in any kind of
11 a court or legal proceeding?

12 A No, sir.

13 Q This is your maiden voyage?

14 A Yes. Bear with me.

15 Q Bear with me, please.

16 A All right.

17 Q Very simply, let me ask you, you are
18 not represented by any counsel here today,
19 are you?

20 A No.

21 Q I will ask you some questions and
22 perhaps Mr. Kaplen or Mr. Connelly will ask
23 you questions and your answers to those
24 questions are under oath are taken down by
25 Mr. Iodice, and those answers will be used

1 Blank

2 when this case is tried before Judge Francis
3 sometime probably early next year. Do you
4 understand that?

5 A I understand that.

6 Q Your testimony here today is the, has
7 the same force and effect as if you testified
8 in a court before a judge and jury.

9 A Okay.

10 Q And for that reason, if you don't
11 understand completely my question or anyone
12 else's question, you must tell us.

13 A Yes.

14 Q The reason for that is if you answer a
15 question, we, and more importantly, the judge
16 and jury, will assume that you understood the
17 question. So if there is any question at all
18 about what I am saying or what I mean or what
19 the intent is, you will let us know?

20 A Absolutely.

21 MR. KAPLEN: I will object to
22 that statement for the record. I will
23 point out before we start here that
24 defense counsel and I have an
25 understanding that Mr. Butler is aware

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Blank

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that Sabina Paradi has passed away and despite the fact that an official or substitution has not been made in this case and an amended complaint has not been served as of this time, we are going forward with this deposition today as we went forward with the deposition of Sabrina's parents and the defendants as if those events had taken place, and this deposition will be used as was those for all purposes in accordance with the federal rules.

MR. BUTLER: That is correct.

MR. KAPLEN: And no offense to Mr. Connelly, I will object to any questions that he might have today as he is not a party to these proceedings. He informed me that he is representing the defendant here personally and is certainly invited to be in the room, but I will object to any questions that he may have.

How tall are you?

About five-ten, five feet eleven.

1 Blank

2 Q You were the same height on February
3 the 25th?

4 A Yes.

5 Q How long have you lived in New York?

6 A About three and a half years now.

7 Q Always on Bayard Street?

8 A Two different addresses on Bayard,
9 always in Chinatown.

10 Q Where did you come from?

11 A California, San Diego before this.

12 Q Were you raised in San Diego?

13 A The Silicone Valley area, Bay area and
14 I went to school in San Diego.

15 Q UCSD?

16 A Yes.

17 Q What did you study?

18 A Theater and music.

19 Q You have your Bachelor's?

20 A No. I transferred to Pace University
21 to do business.

22 Q To study business?

23 A Yes.

24 Q How many years were you at UCSD?

25 A Just under two. Just under two.

1 Blank

2 Q Had you lived in the Bay area,
3 Silicone Valley or San Diego area your entire
4 life?

5 A From the age of four, I lived in
6 California and we were in Massachusetts
7 before that. From four until 21, I was in
8 California.

9 Q When you were in California, did you
10 know Sabina?

11 A I did not.

12 Q Did you have any contact with her at
13 all when you were in California?

14 A No.

15 Q You didn't know of her existence?

16 A No.

17 Q When did you come to New York to go to
18 Pace?

19 A I came to New York in January of '04.

20 Q Did you matriculate at Pace right
21 away?

22 A No. I'm sorry, I matriculated first
23 at Marymount Manhattan briefly and went to
24 Pace.

25 Q For how long were you at Marymount

1 Blank

2 Manhattan?

3 A One semester. I took some time off.

4 Q When did you first come to New York to
5 attend school?

6 A January 2004.

7 Q That was September of '04 you started
8 at Pace?

9 A I took almost a year off. I started
10 Pace beginning of '06.

11 Q During the period when you were at
12 Marymount Manhattan during the year that you
13 had a sabbatical and during the year that you
14 started Pace, were you also employed?

15 A I was employed from November of 2004
16 and have been consistently.

17 Q To date, same --

18 A Same industry, different employers.

19 Q That industry is?

20 A Theater. Theater.

21 Q What would be your functions?

22 A Initially the first few jobs were all
23 on theater staff, Broadway shows and I now
24 work in theater journalism.

25 Q Playbill?

1 Blank

2 A Yes.

3 Q I have a few suggestions on that, but
4 I won't go into that.

5 A I will be happy to take them.

6 Q And Playbill is in Queens?

7 A That office is in Woodside, Queens.

8 Q Do you own a car?

9 A I do not own a car.

10 Q Did you drive a car while you were in
11 California?

12 A Yes.

13 Q Okay.

14 A From the age of 16 until I left.

15 Q What is your date of birth?

16 A January 9, 1983.

17 Q You are 24 now?

18 A Yes.

19 Q Have you ever rented any cars while in
20 New York?

21 A No, I have never driven in New York.

22 Q Never driven at all, anybody else's
23 car?

24 A Not in New York City.

25 Q How about in New York State?

1 Blank

2 A No.

3 Q The last time you would have driven is
4 back in 2004 when you left California?

5 A 2004. I have been back and forth to
6 California, a good amount. My last time
7 was -- my last time driving was I would say
8 not more than six months ago. I was visiting
9 family in Jersey. I go back to California
10 fairly consistently.

11 Q When you visit family in Jersey, you
12 drive?

13 A Yes.

14 Q And also California?

15 A Yes.

16 Q What was your first contact with
17 Sabina?

18 A It was at a group of mutual friends, I
19 want to say the first week of February.

20 Q Of this year?

21 A Of this year, yes, yes. It was
22 somewhere in Soho, mutual friends that we had
23 from NYU.

24 Q NYU, do you have some connection with
25 them?

1 Blank

2 A No. These are social friends that go
3 to NYU.

4 Q That was at a party or group
5 gathering?

6 A Just a little bar gathering, like ten
7 people.

8 Q That was prior to February of '07 when
9 you -- at that gathering, had you ever met
10 Sabina?

11 A I had not. That was the first time.

12 Q Had you ever spoken with her?

13 A No.

14 Q Had you ever known of her existence?

15 A No, turned out we had several friends
16 in common, but I never heard of her.

17 Q Were the friends in common from
18 California or New York?

19 A California, that is how it all turned
20 out. A lot of people were there, but I did
21 not know Sabina before then.

22 Q Did you spend time with Sabina at this
23 social gathering of ten people?

24 A Yes, yes.

25 Q Approximately how much time did you

1 Blank

2 spend?

3 A Hard to say. We talked -- about an
4 hour, it was not a long gathering.

5 Q Between that date and the date of
6 February 25th, were you in Sabina's presence
7 at all?

8 A Yes. Yes. We had one other group
9 gathering I would say somewhere in the two
10 weeks following the first meeting. It was
11 the same group of friends. That was the
12 one -- that was the one other time.

13 Q In between those two meetings, did you
14 at any time speak with Sabina?

15 A Yes. We talked on the internet and on
16 the phone, a little bit.

17 Q Do you have an internet address?

18 A Yes.

19 Q You call it an address?

20 A Yes, an Email address.

21 Q What is that?

22 A I will give you NYC, New York City,
23 MATT83 at Gmail.com.

24 Q Is the 83 -- is the 83 of some
25 significance?

1 Blank

2 A The year I was born.

3 Q Gmail.com?

4 A Gmail.com.

5 Q Do you recall Sabina's Email address?

6 A I think it might have been her name at
7 Gmail, but I'm not sure if it was a dot in
8 there, I don't know, I don't know exactly.

9 Q Her full name Sabina Paradi?

10 A I believe so.

11 Q Was that at dot com?

12 A Yes. It was Gmail.

13 Q Is your telephone number 408-892-8847?

14 A Yes.

15 Q Is that a cell phone?

16 A That is my only phone, cell phone,
17 yes.

18 Q You have no phone in your residence?

19 A No.

20 Q When you would speak to Sabina, would
21 that be on her cell phone?

22 A Yes, the phone conversations were
23 minimal. It was more planning.

24 Q Do you recall her cell number?

25 A No, I don't.

1 Blank

2 Q So would it be mainly by Email?

3 A It wasn't Email. What kids do now,
4 these social on-line network things. It is
5 the same idea as Email messaging.

6 Q Mr. Kaplen and Mr. Connelly and I like
7 to think that we are kids, but I am afraid
8 that we are past that stage.

9 A Well, the same idea as Email, but not
10 through Gmail. It was through this Facebook,
11 like Myspace.

12 Q If one were to look to see if there
13 was any messages that you had with Sabina,
14 where would one look?

15 A You would have to have access to our
16 accounts.

17 Q Assuming there was access?

18 A That would be Facebook.com.

19 Q Two words?

20 A All one word. All one word.

21 Q In that period I am now speaking
22 about, the period between the first social
23 gathering and the second one about two weeks
24 later, was that also in Soho?

25 A It was downtown. It was closer to

1 Blank

2 around St. Marks.

3 Q In that period, approximately how many
4 times did you speak to Sabina on the phone?

5 A Not at all in that period. We talked
6 on the internet. The only other times we
7 talked on the phone is leading up to when we
8 went out, which was just that week trying to
9 plan a time.

10 Q How many Facebook or Gmail messages
11 did you send to her during that period of
12 time?

13 A Hard to remember. Five maybe.

14 Q How many did she send to you?

15 A About the same amount.

16 Q In general, what was the nature of the
17 E-mails or messages?

18 A Kind of innocuous, good meeting you,
19 have you been to this place, we should get
20 together sometime. You know, various common
21 interests, and just trying to set up a time
22 together to go see a show or something. We
23 were both very busy people, so.

24 Q During this period, were you attending
25 class at Pace?

1 Blank

2 A No.

3 Q Were you attending class anywhere?

4 A No, working two jobs.

5 Q One at Playbill?

6 A Yes.

7 Q And the other one?

8 A At the Schoenfeld Theater.

9 Q As?

10 A I'm sorry?

11 Q As?

12 A House staff.

13 Q Doing what?

14 A That is a fancy word for usher work,
15 for Chorus Line.

16 Q That would be Tuesday through Sunday
17 night and Saturday matinees?

18 A Eight shows a week, those are the
19 dates, generally, it changes now and then.

20 Q You wouldn't have Wednesday afternoon?

21 A I would -- I was working the Wednesday
22 matinee and I don't know because my office
23 job now requires more hours, but the office
24 job is Monday through Friday and theater is
25 Tuesday -- the theater job is Tuesday through

1 Blank

2 Sunday.

3 Q Playbill is not a full-time job?

4 A Full-time hours, but I might do both
5 for union-preferred insurance reasons.

6 Ushering has better health insurance.

7 Q Are you a member of the union?

8 A Yes.

9 Q What is that?

10 A IATSE Local 306.

11 Q International Association of Theater?

12 A Theatrical Stage Employees.

13 Q Between the first function group and
14 the second group function, did you ever see
15 Sabina?

16 A No.

17 Q When you went to the second group
18 function, did you know she was going to be
19 there?

20 A No.

21 Q She was there and you were there?

22 A I had an inkling it was a group of
23 closer mutual friends a -- a bunch of people
24 are going out here to see what is up.

25 Q At either one of these, did you have a

1 Blank

2 date with anybody else, did you bring a date?

3 A No. To the functions, no.

4 Q You then met with Sabina at the second
5 affair?

6 A Yes. We talked, you know.

7 Q For approximately how long?

8 A It was not as long of a thing. Not
9 long. Half hour, maybe. Small talk, what
10 have you been doing in the past two weeks,
11 things like that.

12 Q At that group meeting, did you make
13 any plans for any future meetings with
14 Sabina?

15 A I am sure something was said, you
16 know, we need to -- kind of, you know, you
17 wind up saying that to a lot of people, we
18 should get together and sometimes you do.

19 Q Nothing specifically?

20 A We didn't make specific plans.

21 Q That would be sometime around the
22 middle of February apparently?

23 A Yes. We are looking at -- yes, I
24 don't know the exact dates, that is about
25 right.

1 Blank

2 Q Between that time and the 25th of
3 February, did you see Sabina?

4 A No.

5 Q During that time and the 25th of
6 February, did you speak with Sabina by phone?

7 A Yes.

8 Q Approximately how many times?

9 A Two or three times in the week leading
10 up to when we went out to try to make plans.

11 Q In that period between that second
12 group affair and the 25th of February, did
13 you have Email messages with her?

14 A I am not certain there were E-mails.
15 May have been a Facebook message or two, but
16 the same idea.

17 Q Just for the education of those of
18 us --

19 A There is so much of it now.

20 Q Is there a difference between Email
21 and Facebook or is it the same thing?

22 A Functionally the messaging is the same
23 idea. Just Email, you can send it to anybody
24 with an address and Facebook, you need to be
25 a member of the community.

1 Blank

2 Q If I referred to it as an electronic
3 message, would that cover it?

4 A Yes.

5 Q Would you have the electronic
6 messages?

7 A Yes.

8 Q Approximately how many?

9 A In that week, maybe one.

10 Q Between the second group meeting and
11 the 25th?

12 A Yes. And in that week, it went from
13 writing, oh, we should get together to
14 actually being on the phone, let's get
15 together, let's plan a time.

16 Q Other than the two group meetings that
17 you told us about and the time when you had
18 the date on February 25th, were there any
19 other times that you actually physically were
20 with Sabina?

21 A No.

22 Q During the conversations that you had
23 at the group meetings, and by electronic
24 messaging and phone, did you ever discuss
25 anything about her future plans or your

1 Blank

2 future plans or was it just --

3 A A little bit.

4 Q What did you discuss?

5 A You know, earlier meetings, you know,
6 where did you go to school, what are you
7 studying. So we knew what each other's
8 fields were and I got an idea of, kind of
9 what she wanted to do.

10 Q What was that?

11 A I believe she wanted to go into the
12 pediatric side, nutritional medicine.

13 Q What did she say about that?

14 A About what part of that, about why she
15 wanted to do it or.

16 Q What she intended or wanted to do?

17 A That she was always interested in
18 medicine and wanted to go to med school, but
19 kind of found her niche more with the
20 nutritional medicine and liked working with
21 kids and that seemed to be where it was
22 leading given the fellowship she was taking
23 part in.

24 Q Did you express to her what your hopes
25 and fears of all of the years might have

1 Blank

2 been?

3 A Yes.

4 Q What were they?

5 A My aspirations, within my industry and
6 still needing to finish school at some point
7 and just trying to reconcile the money with
8 the degree and things like that just career
9 and educational goals.

10 Q You have been in New York since
11 February of 2004?

12 A January of '04.

13 Q January of '04?

14 A Yes.

15 Q Generally you were in New York for
16 about three years during the time of this
17 incident?

18 A Just over three years.

19 Q In a normal course of events, how
20 would you get around New York?

21 A Subway.

22 Q Did you ever take taxis?

23 A Only when necessary, late at night,
24 but pretty much I am a subway person.

25 Q Buses?

1 Blank

2 A Rarely.

3 Q How about in bad weather?

4 A Bad weather, invariably you wind up on
5 the trains. You can't get a cab. I am near
6 so many stops, I am by Canal Street. So it
7 always made sense.

8 Q When you would have dates with women,
9 ladies, how would you get about?

10 A Usually on the subway, unless it was
11 very, very late. You try not to take the
12 train after 1:00 on a weekend. It takes so
13 long.

14 Q When you didn't take the train, you
15 mean the subway?

16 A Yes.

17 Q When you didn't take the subway, how
18 would you get about?

19 A Taxi.

20 Q In bad weather, with any of these
21 ladies, how would you get about?

22 A It didn't happen that often. I am
23 busy in the winter.

24 Q You would try to get a taxi if you
25 could?

1 Blank

2 A Yes or meet -- if you are talking in
3 bad weather like cold out?

4 Q Raining or snowing?

5 A It was more advisable to take the
6 train because you are underground. If you
7 were standing outside in the street flagging
8 down a cab in the pouring rain, you won't get
9 one and you will just get wet. I am very
10 much a train or subway person.

11 Q After the accident when Sabina was in
12 the hospital, did you go to see her?

13 A For the first, I would say two months,
14 I was there every day. I didn't miss a day
15 for a couple of months.

16 Q That was at St. Vincent's?

17 A Yes.

18 Q How about after that?

19 A After that, at about the time when she
20 was moved uptown, it became less and less.

21 Q When she was at Presbyterian Hospital?

22 A Yes.

23 Q How often did you go?

24 A For a while she went to -- upstate.

25 Q Helen Hayes?

1 Blank

2 A The first stint at Columbia, I tried
3 to get there maybe once or twice a week.

4 Q Did you go up to Helen Hayes?

5 A I didn't.

6 Q How about the second stint?

7 A I can't say what the average was.
8 Maybe it was once a week, on the weekend. I
9 would always, I would always be on the phone
10 with those that visited just to see what was
11 going on.

12 Q Who would you be on the phone with?

13 A Just various other local friends who
14 were up there and also a lot of her -- since
15 that was the hospital where she worked,
16 several of them were working anyway. So they
17 were able to be there pretty much around the
18 clock.

19 Q Who were the people that you spoke to,
20 you said by phone?

21 A Yes.

22 Q Who were they?

23 A A girl named Susan, Christine Lee, I
24 usually recall she was up there a lot.

25 Q Christine Lee?

1 Blank

2 A Yes. Two E's.

3 Q How about Susan's last name?

4 A That will come to me. Marshal,
5 Marshal.

6 Q Do they both work up at Columbia?

7 A Susan does.

8 Q In nutrition?

9 A Yes. I think they are interns in the
10 same program.

11 Q The two of them?

12 A Just Susan, I'm sorry.

13 Q Do you know where Susan Marshal works?

14 A Up there, I don't know where she is
15 currently. She works at the hospital.

16 Q At Presbyterian?

17 A Yes. Or through Presbyterian at
18 different sites depending on the rotation.

19 Q Like up at Allen --

20 A Yes, like if they are going through a
21 cancer rotation, they might put them
22 somewhere else.

23 Q Anybody else you would speak to
24 besides Susan and Christine?

25 A Fellow named Ron Penolio is up there

1 Blank

2 quite a bit. Generally Susan was the best
3 one to call because she was always there.

4 Q Did Ron work there?

5 A No. He was a childhood friend of
6 hers.

7 Q From California?

8 A Who happens to live here.

9 Q You would find out about her condition
10 and how she was doing, et cetera?

11 A Yes.

12 Q During any of the times when you
13 visited Sabina, did she ever speak?

14 A She never verbalized. She never spoke
15 words.

16 Q This would be during this daily -- the
17 daily visits were about two month and twice a
18 week during her first stay at Columbia, maybe
19 once a week during that entire time?

20 A Correct.

21 Q On the 25th of February, where did you
22 meet with Sabina?

23 A The corner of 42nd and Eighth Avenue
24 just off of the C train, the blue line.

25 Q Had you ever been to the nurse's

1 Blank

2 facility at Cornell -- at the Cornell portion
3 of the New York Hospital where Sabina was
4 living?

5 A No.

6 Q Other than the two group meetings, was
7 that the first time that you had seen
8 physically seen Sabina?

9 A Yes. That was the third time ever
10 that I had physically seen her, the first
11 time on a one-on-one capacity.

12 Q All right. Do you remember what she
13 was wearing?

14 A Yes, it was a sweater, it was kind of
15 a light, light brown tannish woven sweater
16 and I think jeans.

17 Q By jeans, you mean denim blue?

18 A Yes.

19 Q Did she have any outerwear?

20 A She had a coat with her. I don't
21 recall if she was wearing it at the time.

22 Q Do you recall what color the coat was?

23 A No.

24 Q Was it a full length coat?

25 A I honestly don't remember the exact

1 Blank

2 style of it. I don't think it was an
3 overcoat. It just -- it was not horribly
4 cold out, just a little cover.

5 Q Did she have any kind of head gear?

6 A No.

7 Q Do you recall what kind of shoes she
8 was wearing and/or outer shoes?

9 A I have no idea.

10 Q You don't know if she was wearing
11 rubbers or galoshes or anything?

12 A No. I can't say for sure. I can't
13 manage they would be open toe as it was a
14 chilly day. It was a little chilly.

15 Q When you met, was she carrying
16 anything?

17 A A bag. She had a purse, bag.

18 Q You indicated your shoulder, was it a
19 shoulder bag?

20 A Yes.

21 Q Do you recall what color that was?

22 A I do not.

23 Q What were you wearing?

24 A I was wearing a blue, same style shirt
25 as this, button down shirt, blue and white

1 Blank

2 stripes.

3 Q Like the one you have on now?

4 A Yes, different pattern, different
5 pattern, but same style shirt.

6 Q Same basically?

7 A Yes, and tan linen pants.

8 Q Any outerwear?

9 A I had a -- I had with me my overcoat.

10 Q What color is that?

11 A Darkish gray, black.

12 Q Were you wearing the overcoat at the
13 time of the accident?

14 A I believe I was.

15 Q What kind of footwear did you have?

16 A I believe they were these shoes,
17 actually, black shoes, black, whatever you
18 call them, leather dress shoes.

19 Q What kind of soles are on them?

20 A Rubber, I believe.

21 Q Rubber?

22 A Yes.

23 Q Did you have any kind of head gear?

24 A No.

25 Q When you met her, were you carrying

1 Blank

2 anything?

3 A Just a bag, I always have my messenger
4 bag.

5 Q Is that a shoulder bag?

6 A It is over the shoulder, messenger
7 bag, one shoulder.

8 Q Is it that same bag?

9 A Same bag, different generation of it.

10 Q What color was that?

11 A Black.

12 Q Did either one of you have an
13 umbrella?

14 A I had it. It was in my bag.

15 Q Is this a fold-up kind?

16 A No, one of those Canal Street ones,
17 three dollar ones.

18 Q It folds up?

19 A It does not fold, but it springs out,
20 the ones that last for a week.

21 Q What color is that?

22 A Black.

23 Q Did Sabina also have an umbrella?

24 A She did not have an umbrella with her.

25 Q When you met at 42nd Street and Eighth

1 Blank

2 Avenue, was there a specific place there that
3 you met?

4 A Outside of the Duane Reade.

5 Q What time did you leave?

6 A About 5:30.

7 Q Do you remember the day of the week
8 that it was?

9 A Sunday.

10 Q Had there been any proposed dates
11 before this, that for whatever reason were
12 not kept?

13 A Nothing official. This was the first
14 planned and successful meeting.

15 Q What were the plans for the evening?

16 A I had tickets to a show at 7:30, over
17 at 37th and Tenth and we met and went to
18 dinner.

19 Q What show was that?

20 A It is called In the Heights.

21 Q Off Broadway?

22 A Off Broadway, currently on its way to
23 Broadway.

24 Q In The Heights?

25 A Yes.

1 Blank

2 Q What theater is that?

3 A 37 -- excuse me, 37 Arts Center.

4 Q Is that on 37th between Ninth and
5 Tenth?

6 A Yes. Closer to Tenth.

7 Q Which side of 37th is it on?

8 A South side.

9 Q Did you go directly from the Duane
10 Reade at 42nd and Eighth to the theater?

11 A No. We went to dinner on Ninth
12 Avenue.

13 Q Where is that?

14 A Film Center Cafe on Ninth and 44th, I
15 think.

16 Q How did you get from Duane Reade over
17 to the Film Center Cafe?

18 A Walked.

19 Q How was the weather then?

20 A It was very nice at that point. It
21 was clear.

22 Q Approximately how long were you at the
23 Film Center having the meal?

24 A I would say right around an hour.

25 Q Did you proceed from there to the

1 Blank

2 theater?

3 A Yes.

4 Q How did you get from there to the
5 theater?

6 A Just walked seven blocks down.

7 Q How was the weather then?

8 A On the walk from dinner to the
9 theater, it had just started to snow very,
10 very lightly. Just some flurries.

11 Q Was it snowing to the extent that you
12 had to take your umbrella out?

13 A No. At that point, it was so light,
14 it was more just like visually pleasing.

15 Q Did you or Sabina have any
16 difficulties in walking?

17 A No.

18 Q You got to the theater sometime just
19 around 7:30?

20 A Yes.

21 Q Did you stay for the entire show?

22 A Yes.

23 Q Approximately what time -- do you know
24 how long the show was?

25 A The show was -- I am having trouble

1 Blank

2 recalling if it was a 7:00 or 7:30 curtain.

3 The show runs a little over two hours. So we
4 got out of there probably about 9:15. So
5 probably around a 7 o'clock curtain.

6 Q You got out 9:15 roughly?

7 A Yes.

8 Q Would it be fair to say while at the
9 theater other than -- I assume this is a
10 dramatic play, not a musical?

11 A It is a musical.

12 Q There would be one intermission?

13 A Yes.

14 Q Other than the intermission, would it
15 be fair to say that both you and Sabina, your
16 concentration was on the show?

17 A Yes, during the show.

18 Q 15-minute intermission?

19 A Yes.

20 Q What did you discuss during the
21 intermission?

22 A The show mainly. It is my ninth time
23 seeing it. It is a very good show.

24 Q It must be.

25 A Yes.

1 Blank

2 Q Had Sabina seen it before?

3 A No.

4 Q Did she like it?

5 A Yes.

6 Q During the intermission, did you stay
7 in the theater or did you go out in the
8 street?

9 A Stayed in the theater.

10 Q During the intermission, were you
11 aware of what the weather was like outside by
12 people coming in or talking?

13 A No, we stayed at the seats. I think I
14 ran to the restroom. The orchestra of that
15 theater is underground. I didn't see
16 outside.

17 Q You were in the orchestra?

18 A Yes.

19 Q When the show was over at
20 approximately 9:15, what did you do?

21 A Just went upstairs and kind of
22 discussed what the next plan was and decided
23 that we were going to just go get a drink
24 over at somewhere on Eighth Avenue.

25 Q Where?

1 Blank

2 A We were just going to see what looked
3 good.

4 Q Was there a reason why you selected
5 Eighth Avenue?

6 A I am more familiar with that. It is
7 more where I work, a lot of good options.

8 Q Where do you work, I know you are in
9 Woodside?

10 A That is the night job. That is right
11 in my area, the Schoenfeld Theater on 45th
12 between Seventh and Eighth.

13 Q Have you ever been to a restaurant or
14 bar named the Vintage Baron?

15 A I have been to a place called Vintage,
16 but Baron, I am not familiar with.

17 Q Is the Vintage at 52nd and Eighth?

18 A I know the one that you are talking
19 about. I have not been to that one. I have
20 been to a Vintage on I think 52nd and Ninth.

21 Q Do you recall telling the police that
22 you were intending to go to the Vintage Baron
23 52nd and Eighth?

24 A No. No. I might have mentioned
25 Vintage and I think Vintage was mentioned and

1 Blank

2 there are two Vintages, but if we went, it
3 would be the one on Ninth Avenue.

4 Q Ninth or Eighth?

5 A I don't know. It was so long. Ninth
6 or Eighth is a possibility, but 52nd is the
7 cross street.

8 Q When you got out of the theater, what
9 was the weather like?

10 A It was just beginning to snow again.

11 Q Heavy, light, medium?

12 A A touch heavier than the flurries
13 before.

14 Q Was it snowing to the extent that you
15 took out your umbrella?

16 A Yes. It was just kind of that cut off
17 where an umbrella was desirable.

18 Q Did you extend the umbrella; it was
19 collapsible?

20 A Yes.

21 Q Did you extend it the entire way?

22 A I opened it up.

23 Q This is the black umbrella that you
24 described before?

25 A Yes.

1 Blank

2 Q I think you said that the theater that
3 you were at was, don't tell me the name
4 again?

5 A 37 Arts Center.

6 Q That is more towards Tenth?

7 A Yes, south side of the street little
8 closer to Tenth.

9 Q When you came out of the theater, did
10 you attempt to get a cab on 37th?

11 A No.

12 Q Okay.

13 A We were going to walk.

14 Q That was your intention?

15 A Yes.

16 Q Did you walk along 37th?

17 A We walked the stretch from the theater
18 to Ninth and then, you know, then into --
19 that is the intersection where it happened.

20 Q As you walked along the curb between
21 the south curb and the building line, where
22 were you and where was Sabina?

23 A Walking this way, I was on the right
24 side and I was closest to the buildings and
25 she was closest to the street.

1 Blank

2 Q Was there any reason why you were
3 walking that way?

4 A No. Nothing premeditated. I probably
5 opened the door for her and she walked out
6 first and we continued in that progression.

7 Q As you walked down 37th Street, were
8 you holding her hand or holding her elbow?

9 A No.

10 Q Your arm around her or anything?

11 A No.

12 Q Was she holding you in any way?

13 A No.

14 Q Were you both walking independently?

15 A Yes.

16 Q You on the right and she was on the
17 left?

18 A Yes.

19 Q Were you wearing glasses?

20 A No.

21 Q Do you wear glasses?

22 A I wear contact lenses.

23 Q Did you have them on?

24 A Yes.

25 Q What is the condition for which you

1 Blank

2 required contact lenses?

3 A I can't get by without them. I always
4 have them on.

5 Q Nearsighted? Farsighted?

6 A Very, very nearsighted.

7 Q You had them on that night?

8 A Yes.

9 Q Do you require two different types of
10 styles of contact lenses, one to read and one
11 for distance?

12 A No. Same ones and it is the same in
13 both eyes, no astigmatism, just strong.

14 Q Are they tinted in any way?

15 A No.

16 Q Did you continue that way walking
17 independently, you on the right and she was
18 on the left?

19 A Yes.

20 Q Did you come to the intersection of
21 Ninth Avenue and 37th Street?

22 A Yes, we got to that intersection.

23 Q As you walked along 37th Street, did
24 you have an opportunity to observe either the
25 traffic light or the pedestrian signal?

1 Blank

2 A Oh, the walk signal?

3 Q Yes. As you walked along 37th Street,
4 did you have occasion to observe either the
5 traffic signal or the pedestrian signal at
6 the corner?

7 A I definitely observed it before we
8 started crossing the street. I can't say
9 about the approach, but the intersection like
10 that, you always need to cross properly.

11 Q Did you come to the corner?

12 A Yes.

13 Q Did you stop at the corner?

14 A I don't recall if it was already green
15 or if we had to wait a moment.

16 Q Okay.

17 A I think we actually did stop for a
18 minute. I am trying to think back to the
19 conversation. I think there was a couple of
20 seconds' wait before it turned green.

21 Q The traffic light?

22 A Before it turned to the walk signal.

23 Q Did you observe it?

24 A Yes.

25 Q How long were you at the corner,

1 Blank

2 stopped at the corner before the signal
3 turned to walk?

4 A It was not long at all. Within ten
5 seconds of approaching there, I know because
6 we were ahead of the back of the pedestrians,
7 so there was nobody really adjacent to us.
8 So we -- at the time when it turned green, we
9 were still, you know, a few yards ahead of
10 everybody else.

11 Q There were people behind you from that
12 theater?

13 A Yes. People were leaving the theater
14 slowly with cigarettes and whatnot.

15 Q Are there other theaters on 37th
16 Street?

17 A Not on that stretch, but there are two
18 theaters in that building.

19 Q Did the other theater have any show
20 that night?

21 A I believe they did and I don't know if
22 it let out at the same time.

23 Q What was the other theater?

24 A 37 Arts Center, Theater B.

25 Q You were in Theater A?

1 Blank

2 A Yes, two-theater complex.

3 Q You were in the orchestra?

4 A Yes.

5 Q Below the street level?

6 A Yes.

7 Q Are there seats in that Theater A at
8 street level?

9 A Yes, it is built so that the mezzanine
10 is street level. So the stage is actually
11 below ground.

12 Q The entrance to Theater A would be on
13 mezzanine level?

14 A Yes.

15 Q You having been in the orchestra were
16 ahead of everybody else?

17 A Yes, we got out of there pretty quick.
18 We didn't linger around with the cast or
19 anything.

20 Q Was anybody walking ahead of you as
21 you walked up 37th Street?

22 A A few people couples sprinkled here
23 and there a little bit ahead of us. We were
24 the first ones, we were the first ones to
25 arrive for that crossing.

1 Blank

2 Q Okay. Did any of the few couples
3 sprinkled ahead of you cross Ninth Avenue?

4 A You mean --

5 Q In front of you?

6 A I guess they must have been or turned.
7 I really don't recall.

8 Q The few couples ahead of you,
9 sprinkled ahead of you, how far ahead of you
10 were they?

11 A You know, half, quarter of a city
12 block, a good distance.

13 Q Okay.

14 A Not a huge theater, only a couple of
15 hundred people coming out.

16 Q Was it a sellout?

17 A No. It was not sold out that night.

18 Q Okay.

19 A Probably about 70 percent of the
20 house.

21 Q How far behind you were the other
22 people?

23 A That, I don't know until after the
24 accident happened.

25 Q After the accident happened, did you

1 Blank

2 find out how far behind?

3 A Yes. There was a nurse who ran over
4 to us almost immediately.

5 Q Did she come out of the theater?

6 A I think she must have been because
7 there was not much else around there.

8 Q It was a woman?

9 A Yes. She was a nurse, I think she
10 couldn't be too far behind.

11 Q Did you ever learn her name?

12 A No.

13 Q Did you ever speak to her again?

14 A No.

15 Q Did you speak to her then?

16 A She was really focused on trying to
17 help Sabina.

18 Q Did you speak to her?

19 A I don't know if we really exchanged
20 anything other than to say, you know, I am
21 with her and then the nurse kind of took over
22 until the proper medics arrived.

23 Q When you arrived at the corner, was
24 there anyone else there?

25 A Not to my memory.

1 Blank

2 Q What was your intention when you
3 arrived at the corner?

4 A To cross the street.

5 Q To where?

6 A To the other side of Ninth Avenue and
7 then to continue on to Eighth Avenue and at
8 some point, take a right to go up further,
9 you know, closer to 40, 42nd.

10 Q Take a right?

11 A Left, sorry.

12 Q Excuse me?

13 A Left, sorry.

14 Q What was the condition of the snow at
15 that time?

16 A Light layer that settled from the
17 previous snowfall. There was the snowfall at
18 the beginning of the show and it must have
19 stopped for a while and it was just starting
20 up again as we left. So there was -- there
21 was a little bit of a layer, but you could
22 see a lot of cement. There definitely
23 was -- it was definitely not covered.

24 Q What was the condition of snow
25 falling?

1 Blank

2 A Just -- not an oppressive snowfall,
3 but just enough to want the umbrella out, a
4 nice flurry.

5 Q You had the umbrella out?

6 A Yes.

7 Q You were holding it in your hand?

8 A Yes.

9 Q Right hand?

10 A Left hand.

11 Q Is that your dominant hand?

12 A No.

13 Q Was Sabina still to your left?

14 A Yes.

15 Q As you walked along 37th Street, did
16 you walk more or less abreast?

17 A Yes.

18 Q You said you didn't recall the type of
19 shoe that Sabina was wearing, but you
20 recall -- do you recall whether it was flat
21 or heel?

22 A I am sure it was a flat.

23 Q Okay.

24 A I don't recall the style.

25 Q During approximately the ten seconds

1 Blank

2 that you said, were you stopped at the
3 corner?

4 A Something like that. It was a
5 negligible wait.

6 Q During that time, Ninth Avenue is one
7 way down southbound?

8 A Yes.

9 Q And 37th is one way westbound?

10 A Yes.

11 Q Did any cars or vehicles pass you
12 going south on Ninth Avenue as you were
13 stopped?

14 A Yes, I think probably just the last of
15 whatever residual traffic. It really wasn't
16 a very heavy traffic night from what I could
17 tell about it in that area. May have been
18 one or two cars that went by or turned green.

19 Q Had you been to this theater before?

20 A Yes, many times.

21 Q Is that one of the eight prior times
22 you had seen this?

23 A Yes. It is great.

24 Q Were you aware of the fact that there
25 was an entrance to the Lincoln Tunnel right

1 Blank

2 off of 37th Street on Ninth Avenue?

3 A Yes. I knew it was over there.

4 Q There were two lanes marked for that
5 tunnel, are you aware of that?

6 A I didn't have the specifics. I knew
7 it was a tunnel area and therefore, it could
8 potentially -- it is not a place you want to
9 jaywalk.

10 Q So you had seen in the past a lot of
11 traffic going into the --

12 A Yes, I had seen at other times there,
13 it was heavy traffic.

14 Q Had you seen vehicles turn from 37th
15 Street onto Ninth Avenue before, not this
16 time, but on other occasions?

17 A Yes, inevitably I know it was -- I
18 inevitably I know it was an intersection
19 where turns happened.

20 Q Had you, on occasions before, seen
21 vehicles turning left 37th Street into those
22 Lincoln Tunnel lanes?

23 A I am certain that I had.

24 Q The Lincoln Tunnel lanes would be on
25 the west side of Ninth Avenue?

1 Blank

2 A Yes.

3 Q During that approximately ten seconds
4 period when you were stopped, did you see any
5 vehicles on 37th Street?

6 A On 37th Street, there were a few
7 stopped, you know, oncoming traffic. I
8 couldn't really tell how many from that
9 vantage point.

10 Q Cars?

11 A Vehicles. I am not really sure.

12 Q So they would be facing west stopped
13 on 37th?

14 A Yes.

15 Q Were you familiar with the traffic
16 light pedestrian sign sequence at that corner
17 having been there some eight times before?

18 A I hadn't worked out the sequence. I
19 just know when it is green, cautiously
20 continuing into the intersection.

21 Q During that approximately ten-second
22 period, what was the color of the traffic
23 light for 37th Street?

24 MR. KAPLEN: What, ten seconds?

25 MR. BUTLER: The ten-second

1 Blank

2 period that he said he was stopped
3 with Sabina.

4 A I --

5 Q Did you understand that to be the
6 question?

7 A I understand what you are asking. I
8 don't know what color the light was. I know
9 what color the pedestrian sign was.

10 Q What was the pedestrian sign color?

11 A Red hand.

12 MR. KAPLEN: Off the record.

13 (Discussion held off the
14 record.)

15 Q Do you know how long the pedestrian
16 sign had been red?

17 A I don't. Probably for a full cycle.

18 A full cycle. I don't know.

19 Q Do you know what a full cycle is?

20 A No.

21 Q At any time while you were standing on
22 the corner, did the pedestrian sign change?

23 A It turned to the walk sign at one
24 point.

25 Q When it turned to the walk sign, had

1 Blank

2 any of the people during this ten-second
3 period, any of the people behind you caught
4 up to you?

5 A Not fully.

6 Q Had any of the people who had been
7 sprinkled in front of you, were any of them
8 waiting?

9 A We were alone at that intersection at
10 least laterally. There was nobody waiting
11 with us.

12 Q While you were at that intersection
13 during that ten-second period, did anyone
14 walk across 37th Street on the west side of
15 Ninth Avenue?

16 A Not that I remember.

17 Q Did anyone walk across the east side
18 of Ninth Avenue at 37th?

19 A I don't know. That would be the
20 opposite side of the street. I don't know.

21 Q Was traffic backed up going into the
22 tunnel?

23 A Going into the tunnel, there was no
24 traffic, no cars on my side of 37th Street.
25 So everything behind us was fully empty, just

1 Blank

2 a couple of parked cars.

3 Q You are talking about on Ninth Avenue?

4 A On Ninth Avenue to the right, it
5 didn't -- there was no backup.

6 Q You have seen backup there in the
7 past?

8 A It happens, yes, I am sure, but at
9 that point, there was nothing significant.

10 Q As you stopped there, did you see
11 vehicles stopped across the street?

12 A Yes. I saw there were vehicles.

13 Q Can you tell how many?

14 A There were at least vehicles in both
15 lanes. I didn't see how far back they went.

16 Q Did those vehicles have lights?

17 A Their lights were on, yes.

18 Q Driving lights?

19 A Yes.

20 Q Did those vehicles have turn signals?

21 A Not that I remember.

22 Q While the red hand was showing, did
23 any of those vehicles westbound on 37th
24 Street move?

25 A I don't think so.

1 Blank

2 Q Okay.

3 A While we had the red light?

4 Q While you had the red hand?

5 A Not that I remember, I don't think so.

6 Q Where on the corner, where in that
7 area were you standing?

8 A On the sidewalk right by the traffic
9 light pole.

10 Q Which side of the traffic pole?

11 A I guess on the -- I don't know, we
12 were on the sidewalk.

13 Q Is there a traffic light pole there?

14 A I seem to remember one.

15 Q Was Sabina still to your left?

16 A Yes.

17 Q Were you closer to the pole, was she
18 or were you behind it or in front of it?

19 A If I remember correctly, the pole was
20 on the right, so I would be closer to the
21 pole. Or the thing where you push.

22 Q Where you push and nothing happens?

23 A Right. I don't know if they have
24 those anymore.

25 Q What was your intention in terms of

1 Blank

2 movement?

3 A We were intending to go straight
4 across the street and walk another avenue
5 over and take it from there.

6 Q At any time from the time that you
7 left the theater until the time -- until the
8 time of the accident, did you make any effort
9 to hail a cab?

10 A No. That was not an option at that
11 point.

12 Q Could you clearly see the vehicles in
13 the two lanes stopped on 37th Street?

14 A There was no obstruction, if that is
15 what you mean.

16 Q When the signal turned from, I think
17 you said you didn't notice the traffic light,
18 you just saw the pedestrian sign?

19 A Yes.

20 Q When the pedestrian sign, did it turn
21 directly from red to walk or is there an
22 intermediate signal?

23 A I think it went straight from solid
24 red to the green walk sign.

25 Q Did it have a numerical countdown?

1 Blank

2 A I don't think so, no.

3 Q When it turned to walk, what, if
4 anything, did you do?

5 A When it turned to walk, I checked for
6 any, you know, anybody running the light like
7 you do and continued on. It looked like any,
8 you know, none of the cars in the oncoming
9 turn lane seemed to be making any motions to
10 turn, so we just went on our way, into the
11 intersection.

12 Q Was anyone running the light on Ninth
13 Avenue?

14 A Running the light, I don't know -- no.
15 That is what you check for, that is usually
16 where your danger would be.

17 Q Nobody was doing that?

18 A No.

19 Q As you proceeded across, where were
20 you with respect to the curb line of 37th?

21 A With respect to the curb line?

22 Q Yes.

23 A I --

24 Q If you took the south curb line of
25 37th all the way from the theater over to

1 Blank

2 Eighth Avenue just the imaginary line how
3 far -- where were you with respect to that?

4 A We were right in the middle of the
5 crosswalk area.

6 Q Could you see the markings on the
7 road?

8 A Yes.

9 Q Could you see the markings on the road
10 in the intersection itself?

11 A What kind of markings?

12 Q Markings?

13 A There was no cover.

14 Q Could you see the markings in the
15 intersection?

16 A Markings?

17 Q Box markings?

18 A I could see markings. I can't say if
19 I saw all the markings, but I saw markings.

20 Q You said you were in the middle of the
21 crosswalk area; is that correct?

22 A Yes.

23 Q How wide is the crosswalk area?

24 A A number, it is standard crosswalk, it
25 is a good -- a good width.

1 Blank

2 Q You said you were right in the middle
3 of?

4 A We were close to center, I don't know
5 what actual measurement of the crosswalk is.
6 Eight feet, six feet.

7 Q As you --

8 A Excuse me.

9 Q Did you have your cell phone with you?

10 A In my pocket.

11 Q Did you have any kind of a Blackberry
12 or anything like that with you?

13 A No.

14 Q Did Sabina have her cell phone?

15 A Yes.

16 Q Did she have any kind of a Blackberry?

17 A No, I think she just had a cell.

18 Q Had either one of you utilized your
19 respective cell phones at any time after you
20 left the theater?

21 A No.

22 Q Did you have your shoulder bag over
23 your shoulder?

24 A Yes.

25 Q Which shoulder?

1 Blank

2 A The strap was on my right shoulder and
3 the -- it was hanging down along my back.

4 Q Indicating the left side of your back?

5 A Yes.

6 Q Did Sabina have her shoulder bag on?

7 A She had her bag. I don't know which
8 side she held it on.

9 Q You were to her right?

10 A Yes.

11 Q Was the bag towards you or away from
12 you?

13 A I don't recall.

14 Q You were carrying your umbrella?

15 A Yes.

16 Q In your left hand?

17 A Yes.

18 Q Were you carrying it for yourself, for
19 Sabina, for both?

20 A We were sharing it, I was holding it
21 up.

22 Q Did Sabina wear glasses?

23 A I think contacts, but I don't know.

24 Q Was she wearing glasses that night?

25 A Not at the time.

1 Blank

2 Q Okay.

3 A I don't know her eye condition.

4 Q Were you and Sabina in contact at all
5 as you proceeded across?

6 A No. I was holding the umbrella and
7 she had her bag and we were not physically in
8 contact.

9 Q As you stopped for this ten-second
10 period, did you talk?

11 A Yes.

12 Q What did you talk about?

13 A Phillie's Cheese Steaks.

14 Q As you crossed, were you talking?

15 A Yes.

16 Q What was that?

17 A Phillie's Cheese Steaks is an
18 expansive subject.

19 Q As you crossed the intersection with
20 the walk sign, talking about Phillie's Cheese
21 Steaks, Sabina was to your left?

22 A Yes.

23 Q You were holding your umbrella with
24 your left hand?

25 A Yes.

1 Blank

2 Q Did you make any observations as to
3 any traffic movement?

4 A I was watching traffic. It is a busy
5 intersection. I was not so engaged in the
6 conversation where I was not looking.

7 Q When you looked at traffic, where were
8 you looking?

9 A Mainly looking at the oncoming, the
10 closer lane of traffic to see if anybody
11 might be either swerving or turning or, you
12 know, also if they were, as we approached the
13 far end of it, if they were going to make a
14 sharp left because I watched.

15 Q I think you said there were vehicles
16 in both lanes?

17 A Yes.

18 Q Did you observe both lanes?

19 A I observed both lanes. I had
20 previously observed both lanes. I was aware
21 of both lanes.

22 Q As you crossed, did you observe both
23 lanes?

24 A Yes.

25 Q As you observed both lanes, as you

1 Blank

2 were crossing --

3 A Excuse me?

4 Q There eventually was an accident; is
5 that correct?

6 A Yes.

7 MR. KAPLEN: Objection to the
8 form.

9 Q As you went across Ninth Avenue -- how
10 many lanes are there on Ninth Avenue?

11 A Five, four to five.

12 Q In what lane did the accident occur?

13 A Right around the halfway point, so
14 that would be the third, I think the third
15 lane entering the fourth.

16 Q Going across, that was the fourth and
17 fifth lane and then you would be on the --
18 the east side?

19 A Yes. We were third and fourth.

20 Q During the time that you had crossed
21 over the first lane, the second lane, and the
22 portion of the third lane nearer to the
23 fourth lane, what did you observe about the
24 cars the vehicles on 37th Street?

25 A There were cars coming, there was --

1 Blank

2 Q Coming where?

3 A Coming straight. There were at least
4 one car that was passing by us one or two
5 cars probably went by in both lanes, but
6 traffic going -- there was traffic going
7 straight in the lane closest to us.

8 Q Did you observe any vehicles turning
9 onto Ninth Avenue?

10 A I didn't see if anyone turned to the
11 left or otherwise.

12 Q There was an accident involving a
13 vehicle, was there not?

14 MR. KAPLEN: Objection to the
15 form.

16 THE WITNESS: What does that
17 mean?

18 MR. KAPLEN: Rephrase the
19 question without saying accident.
20 There was an incident. I will object
21 to the term accident.

22 MR. BUTLER: Okay.

23 MR. KAPLEN: I will continue to
24 object to that term, that connotation.

25 Q It is clear there was an accident, but

1 Blank

2 I will defer for purposes of this to
3 Mr. Kaplen and refer to there was an incident
4 involving --

5 A There was an incident.

6 Q What type of vehicle was that?

7 A It was a pickup truck.

8 Q When I refer to the pickup truck, you
9 know what I am talking about?

10 A Yes.

11 Q At any time before this incident, did
12 you observe that pickup truck?

13 A I am sure in my periphery, I saw a
14 pickup truck and there was new cars coming in
15 that lane, but as there was traffic in both
16 lanes, it didn't strike me as anything.

17 Q Did you observe that pickup truck
18 turning at all?

19 A I didn't see the pickup truck as it
20 began its turn trajectory.

21 Q Do you know whether or not that pickup
22 truck had its left turn signal on?

23 A I didn't see. There were other cars
24 coming by.

25 Q Did you ever see that pickup truck in

1 Blank

2 the course of its turn?

3 A Not until it was -- not until it was
4 too late.

5 Q When you say too late?

6 A Not until just the moment before the
7 impact.

8 Q Knowing this intersection and knowing,
9 I think you said it was a busy intersection,
10 did you continue looking at these cars as you
11 and Sabina walked across Ninth Avenue?

12 A Yes, I could see the cars.

13 Q Were you looking at them to see what
14 they were doing?

15 A I was watching them come forward, yes.

16 Q You didn't see the pickup truck until
17 the moment before the impact?

18 A I did not.

19 Q Do you know whether Sabina came in
20 contact with the pickup truck?

21 A Whether contact was made or if she
22 initiated contact? She was hit by the pickup
23 truck.

24 Q Do you know where on Sabina's body?

25 A From what I could see, the impact

1 Blank

2 occurred pretty square on, on the shoulder
3 area.

4 Q Shoulder area?

5 A Yes. That would be my guess
6 from -- it happened very quickly, shoulders
7 and torso.

8 Q Shoulders and?

9 A Shoulders.

10 Q Did you observe what portion or
11 portions of the pickup truck were involved
12 was or were involved?

13 A It was a pretty square-on incident, it
14 was the front where, you call it the front
15 grille.

16 Q You saw that?

17 A Yes.

18 Q Is that the first time you saw --

19 A Saw?

20 Q Is that the first time you saw the
21 vehicle when the impact took place?

22 A That is the first time I saw it in
23 that close proximity.

24 Q Had you seen it before?

25 A I had seen him approach with all the

1 Blank

2 other cars in that lane.

3 Q Had you seen him turning?

4 A I didn't see him start his turn.

5 Q Did you see him at any time in his
6 turn?

7 A Right before the impact.

8 Q You see him before the impact or at
9 the time of the impact?

10 A There was -- I don't know the exact
11 how many seconds it was. I saw him during
12 the split second right before it happened.
13 There was a moment of recognition and there
14 was a split second thinking that it was going
15 to be a close call.

16 Q You were standing or you were walking
17 to the right of the Sabina?

18 A Yes.

19 Q Did the vehicle strike you at all?

20 A No.

21 Q You were standing right next to her to
22 the extent that the umbrella covered both of
23 you?

24 A Yes.

25 Q Could you tell the speed at which the

1 Blank

2 vehicle was proceeding?

3 A It seemed quick for a turn. I would
4 estimate 15. 15 or 20 maybe.

5 Q For what distance of the traffic of
6 the pickup truck did you observe it, so you
7 would estimate it at 15, maybe 20 miles an
8 hour?

9 A I saw it as it approached the two of
10 us and the fact that it happened so quick
11 after he had turned out of his lane is what
12 indicated to me that it was a very quick
13 turn.

14 Q My question, sir, is this, you said
15 you would estimate that he was going 15 and
16 maybe 20 miles an hour. For how great a
17 distance did the vehicle travel that you saw
18 that you would make that estimation?

19 A Probably the distance from when he was
20 halfway into the left lane to when the impact
21 happened. So he had already made his full,
22 whatever, 90-degree rotation.

23 Q How far from you was that?

24 A I --

25 Q How far from the point of impact was

1 Blank

2 that?

3 A Not very far, just about six feet.

4 Q In that six-foot distance, that's
5 where you would estimate that he was going 15
6 to 20 miles an hour?

7 A Yes.

8 Q Okay?

9 A From the vantage point of coming
10 straight on.

11 Q What was the condition of the snowfall
12 at that time?

13 A It still wasn't too severe. It was
14 definitely, there was some fall, but it
15 wasn't -- about the same as it was on leaving
16 the theater a few minutes earlier. Light
17 snowfall.

18 Q There was sufficient snow, so you
19 still had your umbrella up?

20 A Yes.

21 Q I believe you said that neither one of
22 you had head gear?

23 A Yes, we didn't have head gear or hats.

24 Q Where, at what height did you hold the
25 umbrella? By that, I mean where was the

1 Blank

2 umbrella shell?

3 A The umbrella shell was a couple of
4 inches over my head since I was quite a bit
5 taller, the foot or so above Sabina.

6 Q Would it be fair to say that your
7 concern was to protect your date from the
8 snow with the umbrella; is that fair to say?

9 A I don't think -- I don't know what you
10 are inferring. I would say --

11 Q You were walking with your date?

12 A It was a concern to where it was worth
13 holding the umbrella. It was not bad
14 enough -- could that be done without the
15 umbrella? It was not terrible out.

16 Q Holding the umbrella, a concern that
17 you had was to keep the snow from Sabina, was
18 it not?

19 A Yes, it was a courtesy I was offering.

20 Q That was the black umbrella, the
21 collapsible umbrella?

22 A Yes.

23 Q Other than to the police, did you
24 speak to anyone at the scene?

25 A I exchange a few words with the nurse.

1 Blank

2 Nothing -- that was just to say I was with
3 her and her focus was on her and the police
4 came very, very quickly as there was police
5 in the next -- the very next round of cars
6 coming down Ninth. Before I could even call
7 911, there was essentially a police car
8 there.

9 Q Did you eventually call 911?

10 A I called as soon as it happened and at
11 which point the nurse was already there and
12 going to work and trying to keep her alert,
13 and the police were already there and it was
14 never answered, the 911 call, because the
15 police got there.

16 Q Did Sabina speak at all after the
17 impact?

18 A After the impact or at the impact?

19 Q After the impact?

20 A After the impact, she didn't verbalize
21 any words. There was distinctly several
22 moments, I don't know how long, 90 seconds,
23 two minutes, where she was still visibly,
24 what to me would be conscious, her lips were
25 moving, eyes were moving, trying to

1 Blank

2 communicate with the nurse. At this point, I
3 was standing a little bit back.

4 Q You said 90 seconds to a minute?

5 A Yes, before at which point -- after
6 which point the police were there and she
7 slipped out of consciousness.

8 Q What position was she in at that time?

9 A Flat on her back, from what I can
10 tell. I don't know if that is how she
11 exactly landed. The nurse might have
12 repositioned her, but for all intents and
13 purposes, she was flat.

14 Q Did the pickup truck stop after the
15 impact or incident?

16 A Yes. He stopped.

17 Q Where with respect to where the impact
18 took place did the pickup truck stop?

19 A Pretty close -- there was no real
20 forward trajectory. She sort of fell and at
21 the point where he stopped, he wasn't per se
22 right on top of her, but he was very close.
23 I could have reached out and touched it from
24 where everything settled.

25 Q In connection with the impact itself,

1 Blank

2 did you come into contact with the pickup
3 truck?

4 A I did not come in contact with the
5 pickup truck.

6 Q Did you come in contact with Sabina?

7 A I did not.

8 Q In what manner --

9 A Sabina wound up on the ground.

10 Q In what manner did she fall?

11 A She was -- she was hit straight on and
12 essentially just crumpled. I mean, I don't
13 know. She just fell. She didn't go flying
14 or anything, just fell hard on the ground
15 with her full weight and whatever, the weight
16 of the impact.

17 Q Where was she on the ground with
18 respect to the vehicle when the vehicle
19 stopped?

20 A He was -- close. He wasn't over her,
21 but close within.

22 Q When you say close, in front of, on
23 the side of?

24 A I would say he was -- in front of
25 adjacent to where she was laying was the

1 Blank

2 front of the vehicle.

3 Q How far did the pickup truck travel
4 from the point of impact until it stopped?

5 A Really not much distance at all.
6 Could have gone right over her. Couple of
7 feet, however long it takes. He hit the
8 brakes pretty hard after the impact.

9 Q Couple of feet?

10 A If that.

11 Q Did he slide at all?

12 A I don't know, I don't recall.

13 Q Okay.

14 A He was stopped by the time all the
15 dust had cleared and everybody realized just
16 what happened.

17 Q After Sabina was on the ground, were
18 you still holding the umbrella?

19 A No, I dropped the umbrella when the
20 impact happened. I remember --

21 Q In connection with the impact itself
22 or you just dropped it?

23 A I sort of threw it back when I
24 realized she was actually being hit.

25 Q Was there a reason why you threw it

1 Blank

2 back?

3 A Yes. It was a reaction to her being
4 hit and I was going to go and see what the
5 damage was.

6 Q Did the driver get out of his pickup
7 truck?

8 A From what I remember, he got
9 immediately out.

10 Q Was there any conversation with him?

11 A My focus was on Sabina trying to see
12 if it was minor or major and then watching
13 the nurse. He was out of the car and he was
14 speaking a lot, he was saying numerous
15 things. I didn't talk to him except to say,
16 I think I said back away at one point. But
17 the things I remember him saying were "I'm
18 sorry" and he said "The bitch cut me off" and
19 he said "I didn't mean to do it, I just got
20 off work," but I didn't talk to him.

21 Q Who was he speaking to when he said
22 these things.

23 A Probably to me and then once more
24 people got there to whoever was listening.
25 The cops were there pretty quick and they

1 Blank

2 pretty quickly pulled him to the side and he
3 was talking to the cops for a while as I was
4 there.

5 Q You did not hear him talk to the cops?

6 A Just bits and pieces. He got off from
7 work and just got cut off.

8 Q You heard him say that to the police?

9 A Yes. Or whoever, I don't recall.
10 There was a lot of people.

11 Q Do you know who the quote bitch was
12 that he spoke about?

13 A A car, I imagine. That was repeated
14 many times, that he got cut off. Therefore,
15 he didn't see us in his words.

16 Q You gave a statement to the police?

17 A Yes.

18 Q Did you tell them that he said he was
19 cut off many times?

20 A I don't know if I told them, but it
21 was very fresh in my memory that he said
22 that.

23 Q Did you tell them that?

24 A I don't know.

25 Q Other than the police, did you ever

1 Blank

2 give a statement to anyone else?

3 A Numerous police and detectives -- you
4 mean on that night?

5 Q Other than the police at any time?

6 A I gave a statement to the
7 investigator.

8 Q Was that an investigator from
9 Mr. Kaplen's office?

10 A Yes.

11 MR. BUTLER: I will call upon
12 you to produce that statement.

13 MR. KAPLEN: Attorney work
14 product.

15 REQUEST NOTED:

16 Q When was that statement given to the
17 investigator from Mr. Kaplen's office?

18 A I don't remember the date. It was
19 some -- it was some weeks later.

20 Q Okay.

21 A I could produce the date, but it
22 was --

23 Q Do you have a copy of that statement?

24 A I don't have a copy of that statement.

25 Q I don't mean with you, but in your

1 Blank

2 possession?

3 A No. I never got the copy.

4 Q But you signed it?

5 A Yes.

6 Q Did you, yourself, write it out or did
7 the investigator write it out?

8 A He wrote it out, I read over it and
9 signed it.

10 Q In that statement, did you say that
11 the driver of the pickup truck said that the
12 bitch cut me off?

13 A I am pretty sure. I remember saying
14 everything that he said.

15 Q With Sabina on your left, with you on
16 her right and you holding the umbrella and
17 you said that she came in contact with the
18 pickup truck, but the pickup truck didn't hit
19 you and Sabina didn't hit you?

20 A Right.

21 Q In what manner did Sabina fall so that
22 walking next to you holding the umbrella she
23 didn't come in contact?

24 A There was a split second of
25 recognizing the impact. So in that split

1 Blank

2 second, I had the opportunity to take a step
3 forward and she fell very close to me. It
4 was literally a matter of inches that I
5 didn't step forward and avoided contact.

6 Q You stepped forward to avoid contact.
7 Did you make any effort to prevent--

8 A I didn't have a chance to. I saw
9 something coming at us and the next thing I
10 know I hear a scream and she is on the
11 ground.

12 Q She screamed?

13 A She screamed, yes.

14 Q Before?

15 A She screamed for the split second
16 before the impact and up until they hit, a
17 good loud scream.

18 Q Where were you after you moved ahead
19 when the vehicle stopped, where were you with
20 respect to the vehicle when it was stopped?

21 A Foot or two away. I was immediately
22 jumping toward Sabina.

23 Q I am saying --

24 A From right after it happened?

25 Q Yes.

1 Blank

2 A I was just a foot or two away and he's
3 stopped.

4 Q Foot or two away from where, the
5 front?

6 A The side and slightly forward.

7 Q Which side?

8 A If I am the driver, I guess to the
9 left of the driver's side.

10 Q Was there any damage done to the
11 pickup truck?

12 A I didn't stop to look.

13 Q At any time did you make any
14 observations as to any of the white lines, be
15 they intersection lines or crosswalk lines,
16 be they anything, did you make any
17 observations of the lines?

18 A At what point?

19 Q At any time.

20 A I observed that we were within the
21 boundaries. I observed all the lines that
22 were there.

23 Q I will show you --

24 MR. BUTLER: Do you have the
25 photographs?

1 Blank

2 MR. KAPLEN: Yes.

3 MR. BUTLER: May I see them?

4 MR. KAPLEN: Yes.

5 Q Take a look at P2, the photograph.

6 A Yes.

7 Q Do you recognize what that depicts?

8 A The direction in which we were
9 walking.

10 Q You would be walking from the near
11 side to the far side?

12 A Yes.

13 Q Is that the light you were talking
14 about before?

15 A Yes.

16 Q You said you thought you were on
17 the -- the left side from this picture?

18 A Closer. It was on the right side of
19 myself.

20 Q In other words, you would be closer to
21 the curb, to the 37th Street curb?

22 A Yes. While waiting for the light.

23 Q Do you see in the middle of the street
24 there, a depressed construction area?

25 A Yes.

1 Blank

2 Q And a manhole?

3 A Yes.

4 Q Did you observe that as you walked
5 across?

6 A It is not significant in my memory.

7 Q Did you make any effort with the snow
8 falling to avoid that depressed manhole area?

9 A No. I don't remember. Not that I
10 remember.

11 Q Did you slip at all at the time of the
12 incident?

13 A No. There was -- no, I didn't slip.

14 Q Did Sabina slip?

15 A No. Are you talking about after she
16 was hit?

17 Q Did she slip?

18 A I don't think any of us slipped.

19 Q At the time when the incident took
20 place, do you know of your own knowledge
21 whether or not Sabina slipped?

22 A No.

23 Q Do you know of your own knowledge
24 where with respect to that depressed area,
25 the incident took place?

1 Blank

2 A No, I don't.

3 Q For how long after the incident were
4 you at the scene?

5 A I was there with her all the way
6 through the trip to the hospital.

7 Q Did you go to the hospital with her?

8 A I went to the hospital in the -- in
9 the leading ambulance, not the one she was
10 in. I was there all the way through when she
11 went into surgery, which was until about
12 almost midnight.

13 Q At any time during that period, did
14 she speak?

15 A I didn't have contact with her after
16 the point where the police arrived.

17 Q Did you call her parents?

18 A I didn't have any access numbers. I
19 immediately called a couple of mutual friends
20 that we have and then I was at one point,
21 given her cell phone to get a few more
22 numbers. Eventually I got in touch with some
23 people. I think they actually reached the
24 grandparents first. I didn't know how to
25 reach the parents.

1 Blank

2 Q Which friends did you reach out to?

3 A The first one I called was a girl
4 named Claire Robinson. I left a message to
5 call me back and she eventually did while we
6 were still at the hospital and then I called
7 a girl named Amy Van Vechten, V-E-C-H-T-E-N.
8 I mean she didn't know how to reach anyone.

9 Q For how long a period did you talk to
10 the police, you talked to various police?

11 A I talked to a few. There was one at
12 the scene and I think two different
13 detectives or police that talked to me in the
14 hospital. Each one was pretty brief, five or
15 ten-minutes conversation.

16 Q Do you recall the name of the
17 detective that you spoke to at St. Vincent's
18 Hospital?

19 A The only detective I remember was, I
20 have it in my office, Cipoli or something, I
21 think he was the detective, the last one I
22 spoke to.

23 Q Was he the one that you gave the
24 signed statement to --

25 A I don't know. I think that would be

1 Blank

2 my guess, but I don't remember the exact
3 order of names.

4 MR. KAPLEN: Please mark this
5 as Defendant's Exhibit 1 for
6 identification, the witness statement.

7 (Whereupon a witness statement
8 was marked Exhibit 1 for
9 identification as of this date.)

10 Q Down on the bottom, it says there was
11 a telephone interview by Detective Rooney?

12 A Where?

13 Q On the boom very last line, Rooney or
14 Rooney?

15 A Yes.

16 Q Is that what you told Detective Rooney
17 by telephone?

18 A Let me see the date up here. Yes. I
19 do. This was very early on. I remember
20 making this statement.

21 Q Would this be within a day or two of
22 the incident?

23 A Yes, this was definitely within two or
24 three days.

25 Q Take a look, if you will, at the time

1 Blank

2 of the accident. Was your visibility
3 obstructed in any way up in the upper left?

4 A Yes.

5 Q You told Detective Rooney that there
6 was heavy snow?

7 A I guess I did.

8 Q In answer to was your visibility
9 obstructed and you said heavy snow?

10 A I guess I did.

11 Q He wrote down what you said about we
12 were crossing Ninth Avenue, et cetera; is
13 that correct?

14 A This is what he wrote down. Sounds
15 familiar.

16 Q Above on the upper left where it says
17 "Where were you at the time of the accident,"
18 you said "We were walking eastbound on 37th
19 street crossing Ninth Avenue"?

20 A Yes.

21 Q You don't mention the crosswalk there?

22 A No. I thought it was assumed.

23 Q My question is there was no mention of
24 the crosswalk there?

25 A No, no mention of the crosswalk.

1 Blank

2 Q In the narrative, the full narrative
3 below that, briefly describe this accident,
4 there was no mention of the crosswalk, was
5 there?

6 A It is not mentioned.

7 Q You said in there, "What was the cause
8 of the accident?" and you said "Ten percent
9 us not looking"; is that correct?

10 A I guess I did say that.

11 Q Down below, it says, "Did the vehicle
12 swerve or turn to avoid contact," you said "I
13 never saw him coming"; is that correct?

14 A If that is what it says, may I address
15 that?

16 Q Is that what it says?

17 A That is what it says.

18 Q At the time of the accident, was there
19 any other vehicles in the vicinity and you
20 said yes, very few, and then you said we were
21 talking, not really paying attention, and
22 then you said you were walking at a fast
23 pace; is that correct?

24 A That is what it says, yes.

25 Q Where it says weather conditions, you

1 Blank

2 said snow?

3 A I said it was snowing.

4 Q You said the road condition was wet,
5 snowy and sloppy, correct?

6 A I don't recall saying that, but that
7 is what it says. It was snowy.

8 EXAMINATION

9 BY MR. KAPLEN:

10 Q Mr. Blank, what did you mean by the
11 statement that defense counsel has read to
12 you, "Ten percent not looking, 90 percent him
13 making a turn, not giving us the right of
14 way"?

15 A I don't know where that holds up at
16 this point. That is just something I
17 should -- I don't think I meant and I don't
18 think I should have said. I felt very -- I
19 don't remember the day that this -- I don't
20 remember actually making the statement, but
21 there was a lot of residual and as I am
22 finding out now, unreasonable guilt, and I
23 felt very responsible for it.

24 A lot of that -- sort of had I been on
25 the other side of her, you know, all of this

1 Blank

2 other stuff. Had we been a few inches
3 forward or back. I felt very responsible for
4 not being able to spot and avoid the
5 accident, and I said I didn't see him coming,
6 where it says that I never saw him coming
7 prior to where it was too late. Clearly I
8 saw the accident happen. But I did not see
9 him begin his turn.

10 Q When you were walking eastbound on
11 West 37th Street, you mentioned looking at
12 cars proceeding towards you from 37th Street?

13 A Yes, I did see cars proceeding.

14 Q You were looking at cars proceeding
15 that were in the lane immediately towards you
16 which would be the left lane of 37th Street?

17 A Yes.

18 Q Was this truck that eventually struck
19 Sabina proceeding in the left lane?

20 A He was not in that lane. I didn't see
21 him in that lane.

22 Q Which lane would he come from?

23 A The right lane.

24 Q Did you expect any cars or trucks or
25 vehicles to be making a left turn from the

1 Blank

2 right lane of 37th Street?

3 MR. BUTLER: Note my objection.

4 MR. KAPLEN: You can answer.

5 A From what I observed was mainly the
6 turn lane and if indeed, he was cut off, as
7 he claims, then I think my vision would be
8 shielded by the cars in the proper turning
9 lane. I didn't expect anyone from the right
10 lane.

11 Q Making a left turn --

12 A Which I can only assume is not a legal
13 turn lane.

14 MR. BUTLER: Objection to the
15 assumption as to the law.

16 Q This umbrella that you carried, was
17 that obstructing your vision?

18 A No.

19 Q You said that Sabina, in her own way,
20 made a verbal statement?

21 A She screamed with regard to the car
22 bearing down on her.

23 Q What kind of scream?

24 A High pitched. It sounded like it was
25 something from a movie. It was very, very

1 Blank

2 loud and distinct. It was a very loud
3 distinct scream for a second.

4 Q You observed her conscious on -- did
5 you observe her conscious on the ground?

6 MR. BUTLER: Objection.

7 MR. KAPLEN: Let me finish
8 first.

9 Q Did you observe her conscious on the
10 ground for any period of time?

11 MR. BUTLER: Objection. Did
12 you observe her condition, no
13 objection.

14 Q What did you observe about her on the
15 ground?

16 A At the moment where she hit the
17 ground, I jumped after her to see her
18 condition and there was a short period where
19 she seemed to be somewhat responsive and at
20 the moment where me -- and the nurse did not
21 show up yet -- she was moving her lips, not
22 making sounds and her eyes still seemed
23 responsive.

24 At that point, I was kind of up,
25 ushered out of the way by the nurse that took

1 Blank

2 over and she took over in her face trying to
3 get her to answer the verbal queues, and
4 about the time when the police arrived, she
5 was saying I am losing her, she is not
6 responding anymore. Then she went
7 unconscious.

8 Q At all times while you crossed West
9 37th, were you always within the designated
10 crosswalk?

11 A Yes.

12 Q You visited Sabrina at the hospital?

13 A Very frequently at first.

14 Q While at St. Vincent's?

15 A Pretty much every day.

16 Q While you visited her at St. Vincent's
17 Hospital, did you ever hold her hand?

18 A Yes.

19 Q When you held her hand, did she ever
20 respond in some manner?

21 A It was very much day-to-day. She was
22 very heavily sedated a lot. Especially
23 during the first couple of weeks, where it
24 was touch and go. She could go at any
25 moment, but as she came out of it more and

1 Blank

2 more, they were able to lift the level of
3 sedation. So there was times where she
4 seemed almost responsive and conscious.

5 Q What do you mean by that?

6 A It happened to me once or twice, but
7 you would hold her hand and she would squeeze
8 back or a couple of times where her eyes were
9 open. She seemed to be tracking
10 conversations and I was in the room for a few
11 of the times that doctors were in there
12 trying to get her to follow, especially
13 earlier on before the initial move, she was
14 able to follow fingers. She responded to a
15 verbal queue at one point while I was there
16 and there was some very good wakeful times.

17 Q Which verbal queue did she respond to?

18 A Move your hand, I think, something
19 like that.

20 Q You saw her do that?

21 A Yes. I was outside of the room.

22 MR. BUTLER: What was that?

23 THE WITNESS: I was outside of
24 the room. This is very early.

25 Q At times, did you speak to her when

1 Blank

2 you went into the room?

3 A Little bit.

4 Q Did she ever look in your direction
5 when you were speaking?

6 A There was times, yes.

7 Q Were there times where there was more
8 than one person talking in the room?

9 A Yes, there was several people reading
10 to her or having conversations around her.

11 Q Did you see her in any way, at any
12 time ever respond to the multiple
13 conversations taking place within the room?

14 A Yes. There was times where she
15 appeared to be following and a couple of
16 times where I remember her almost smiling.

17 Q Did you hear the sound of a horn
18 before the impact?

19 A No.

20 MR. BUTLER: You said you were
21 outside of the room. Can you explain
22 that?

23 THE WITNESS: I was outside
24 looking in and the doctor was in there
25 doing routine things.

1 Blank

2 Q You were looking through the door?

3 A Open door.

4 Q During this period, do you understand
5 if I use the word endotracheal, trache?

6 A The breathing apparatus.

7 Q During this entire time, did Sabina
8 have a trache?

9 A That didn't go in until the second or
10 third week. She had tubes down her throat
11 for at least a couple of weeks.

12 Q The first couple of weeks, she had
13 tubes down her throat and she had the trache?

14 A Yes.

15 Q At any time after the impact, at any
16 time thereafter, did you ever hear Sabina
17 speak?

18 A She did not verbalize. I didn't hear
19 her speak.

20 Q Did you ever see D1, Defendant's
21 Exhibit 1 before today?

22 A I have never seen that document.

23 Q Did anyone tell you what was in it?

24 A No. I mean I have memories of giving
25 that statement, but I was not prepped as to

1 Blank

2 what it was.

3 Q I don't mean prepped.

4 A It is not fully unfamiliar to me, but
5 I have never seen that as it is now.

6 Q Since this accident, other than the
7 investigator from Mr. Kaplen's office, have
8 you ever spoken to Mr. Kaplen?

9 A Yes.

10 Q When did you first talk to him?

11 A First time was I would say a month --
12 no, it was early June because Sabina had
13 passed away.

14 Q This is before her death?

15 A Yes.

16 Q What was the matter of that
17 conversation?

18 A To go in and to look at photographs
19 and try to give a little more clarity as to
20 my memory, as a to my visual perspective of
21 it.

22 Q Was there a telephone call first?

23 A I believe we spoke to schedule an
24 appointment.

25 Q Did Mr. Kaplen call you, that is my

1 Blank

2 question?

3 A I don't recall who initiated contact.

4 I was --

5 Q How did you know of Mr. Kaplen's
6 existence?

7 A I heard about him from Sabina's
8 father.

9 Q Did Sabina's father ask you to speak
10 to him?

11 A Never asked me to.

12 Q Did her mother ask you to speak to
13 him?

14 A No.

15 Q In any event, did you?

16 A Yes, I spoke to him.

17 Q At his office?

18 A Yes. Back in June.

19 Q How many times?

20 A One time back in June.

21 Q Did you ever speak to him at any other
22 time?

23 A This morning in his office briefly.

24 Q When you were at his office, did he
25 show you this statement?

1 Blank

2 A No. We didn't look at documents.

3 Q Did he tell you what was in the
4 statement?

5 A No. Just a visual.

6 Q Did he show you photographs?

7 A Photographs.

8 MR. BUTLER: Nothing further.

9 MR. KAPLEN: Thank you.

10 MR. CONNELLY: Thank you.

11 (Time noted: 1:46 p.m.)

12

13

14 MATTHEW CHIN BLANK

15

Subscribed and Sworn to before me

16

this day of 2007.

17

18 -----

Notary Public

19

20

21

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I, ANGELO IODICE, hereby certify that the Examination Before Trial of MATTHEW CHIN BLANK was held before me on the 27th day of August, 2007; that said witness was duly sworn before the commencement of his testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Examination Before Trial of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of August, 2007.

Angelo Iodice

ANGELO IODICE

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